

Supreme Court, U. S.
FILED

SEP 15 1977

MICHAEL RODAK, JR., CLERK

In The
Supreme Court of the United States

Term, 1977

No. _____

77-409

ROGER L. GOODWIN,

Petitioner,

VS.

THE STATE OF IOWA,

Respondent.

**PETITION FOR WRIT OF CERTIORARI TO THE
SUPREME COURT OF THE STATE OF IOWA**

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**PETITION FOR WRIT OF CERTIORARI TO THE
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Petitioner prays that a writ of certiorari issue to re-
view the judgment of the Supreme Court of the State of
Iowa, entered in the above-entitled case on May 20, 1977,
and the denial of the Petition for Further Review, entered
herein on July 7th, 1977.

CITATIONS TO OPINIONS BELOW

The opinion of the Supreme Court of the State of Iowa sustains the judgment of the Polk County District Court and is printed in the Appendix.

JURISDICTION

The judgment of the Supreme Court of the State of Iowa was entered on May 20th, 1977, and the Supreme Court of Iowa denied petitioner's Petition for Further Review on the 7th day of July, 1977. The jurisdiction of this Court is invoked under 28 U. S. C. 1257.

QUESTION PRESENTED

Whether or not the petitioner was denied his right to a fair and impartial trial under the Sixth and Fourteenth Amendments to the Constitution of the United States by the District Court's failure to allow cross-examination of one of the State's identification witnesses.

STATEMENT OF THE CASE

Defendant, Roger L. Goodwin, was indicted by the Polk County Grand Jury for the crime of Embezzlement by Agent under Section 710.5 of the 1973 Code of Iowa. Defendant pled not guilty. The matter came on for trial

on the 10th day of November, 1975. On November 14, 1975, the jury returned a verdict finding the defendant guilty as charged. A Motion in Arrest of Judgment and for New Trial was filed on several grounds relating to the recollections of Alice Slatkoske. Both motions were overruled. Judgment was entered and defendant gave notice of appeal.

The petitioner was sentenced to ten years imprisonment.

On May 20th, 1977, the Supreme Court of the State of Iowa affirmed the District Court.

REASONS FOR GRANTING THE WRIT

Certiorari should be granted because the Supreme Court of the State of Iowa in affirming the District Court judgment has rendered a decision which violates the constitutional rights of the petitioner under the Sixth and Fourteenth Amendments of the Constitution of the United States.

In Re Paulos' Estate, 229 N. W. 2d 721 (Iowa 1975).

State v. Crawford, 202 N. W. 2d 99 (Iowa 1972).

State v. Davis, 236 Iowa 740, 19 N. W. 2d 655 (1945).

State v. Harvey, 242 N. W. 2d 330 (Iowa 1976).

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Hopkins v. State, 9 Okla. Crim. 104, 130 P. 1101 (1913).

81 Am. Jur. Witnesses, §§ 542-543 (1976).

CONCLUSION

For the reasons stated above, certiorari should be granted.

Respectfully submitted,

MARTIN R. DUNN

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Des Moines, Iowa 50312

Attorney for Petitioner

APPENDIX

IN THE COURT OF APPEALS OF IOWA

(Filed May 20, 1977)

128

59029

STATE OF IOWA,

Appellee,

vs.

ROGER L. GOODWIN,

Appellant.

Appeal from Polk County District Court—Gibson C. Holliday, Judge.

Defendant appeals the trial court's refusal to allow cross-examination of a State's witness. Affirmed.

Richard C. Turner, Attorney General of Iowa for Appellee.

Martin R. Dunn, of Des Moines, for Appellant.

Submitted to Allbee, C. J., and Donielson, Snell, Oxberger and Carter, JJ.

PER CURIAM:

Defendant Roger L. Goodwin urges the trial court erred in refusing to allow cross-examination of a State's witness. Alice Slatkoske was not allowed to testify regarding her recollection of an unrelated incident of misidentification made by a fellow bank teller in a robbery action. We affirm.

App. 2

The in-chambers testimony of Slatkoske relied on as an offer of proof revealed she was aware that the teller had identified a person who had been arrested and charged with a robbery but that she had no knowledge of the disposition of that case. T. 165. The offer of proof, therefore, indicated Slatkoske had no knowledge of the subsequent finding of misidentification in the unrelated incident.

This case is controlled by *State v. Harvey*, 242 N. W. 2d 330 (Iowa 1976). In *Harvey* the court held as a matter of law the defendant's offer of proof was not sufficiently probative to be introduced to the jury on the issue of his credibility in the absence of any evidence tending to show such proffered fact (the witness' admission to a hospital for a "nervous disorder under the care of a psychiatrist") was related to the witness' capacity to perceive, remember, or relate the facts narrated in his testimony. 242 N. W. 2d at 338.

The offer of proof failed to demonstrate Slatkoske's prior knowledge of the misidentification. In order to show faulty memory it is necessary to first establish that the witness at one time knew the fact. Only then can the present inability to recount that fact be found due to faulty memory. Ignorance of the fact precludes faulty memory of it.

Affirmed.

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**PETITION FOR WRIT OF CERTIORARI
TO THE SUPREME COURT OF IOWA**
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BRIEF FOR RESPONDENT IN OPPOSITION
—○—

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Attorneys for Respondent

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OPINION BELOW

The opinion of the Iowa Supreme Court is set forth
in the Appendix to the Petition.

JURISDICTION

The jurisdictional requisites are adequately set forth
in Paragraph 2 of the Petition.

QUESTION PRESENTED

Was Petitioner denied a fair and impartial trial as guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution by the District Court's refusal to allow cross-examination of one of the State's identification witnesses?

STATEMENT OF THE CASE

The Statement of the Case is adequately set forth in Paragraph 4 of the Petition.

ARGUMENT

Petitioner, Roger L. Goodwin, was charged with the crime of Embezzlement in violation of Section 710.5, The Code (1973).

At trial the State called Alice Slatkoske for the purpose of identifying Goodwin as the person who called himself D. M. Adair and cashed payroll checks. Goodwin's defense attorney attempted to cross-examine Mrs. Slatkoske as to her recollection of an unrelated event. The State objected to the relevancy of the question and the court sustained the objection. An offer of proof was made and the trial court affirmed its exclusion of the evidence. Petitioner alleges error in trial court's restraint of cross-examination. He urges the ruling denies his right to a fair and impartial trial under the Sixth and

Fourteenth Amendments to the United States Constitution.

Respondent acknowledges the proposition that a witness's credibility may be attacked during cross-examination with respect to his capacity to observe, remember, or recount the matters testified about. *State v. Peterson*, 219 N. W. 2d 665 (Iowa 1974). Though a reasonable latitude is accorded to the cross-examiner, *State v. Van Rees*, 246 N. W. 2d 339 (Iowa 1976), trial court is allowed considerable discretion in determining the proper scope of such cross-examination. *Alford v. United States*, 282 U. S. 687 (1931); *State v. Carney*, 236 N. W. 2d 44 (Iowa 1975). It may be said that trial court abused its discretion in the matter only if it is shown that the ruling was arbitrary or unfair and resulted in prejudice to the defendant. *State v. Kimball*, 176 N. W. 2d 864, 868 (Iowa 1970).

In the instant case, Petitioner alleges error in trial court's refusal to allow a state's identification witness, Alice Slatkoske, to be cross-examined concerning her recollection of an unrelated incident of misidentification made by a fellow bank teller in a previous robbery prosecution. The offer of proof relied upon in the in-chambers testimony given by Alice Slatkoske revealed that she had knowledge that a fellow teller had identified a person who had been arrested and charged with robbery. The witness however was unaware of the disposition of that case and testified that she had no knowledge of a subsequent finding of misidentification by the fellow bank teller. The offer of proof was wholly unrelated to Slatkoske's ability to observe, remember or recount matters testified about,

State v. Peterson, supra. Trial court properly prohibited such unnecessary and undesirable cross-examination. See *State v. Crawford*, 202 N. W. 2d 99 (Iowa 1972).

The case of *State v. Harvey*, 242 N. W. 2d 330 (Iowa 1976) is controlling in the instant appeal.

"In light of the principles recognized in the foregoing authorities we conclude, as a matter of law, defendant's offer of proof which showed Barrows had been admitted to a hospital for a nervous disorder, under the care of a psychiatrist was not sufficiently probative to be introduced to the jury on the issue of his credibility in the absence of any evidence tending to demonstrate such fact was related to Barrows' capacity to perceive, remember or relate the facts narrated in his testimony." *State v. Harvey, supra*, 242 N. W. 2d at 338.

In the instant case, Alice Slatkoske had no prior knowledge of the misidentification involving a fellow teller. Ignorance of a fact precludes cross-examination to test the credibility of a witness as to his ability to remember that fact. Trial court used proper discretion in denying the continuance of such unrelated and undesirable cross-examination.

CONCLUSION

The trial court did not violate Petitioner's right to a fair and impartial trial under the Sixth and Fourteenth Amendments to the United States Constitution. Petitioner was attempting to proceed outside the bounds of proper cross-examination and was properly precluded

from such course of action by trial court. The petition for a writ of certiorari should be denied.

RICHARD C. TURNER
Attorney General of Iowa

RAY SULLINS
Assistant Attorney General

CERTIFICATE OF SERVICE

I, Ray Sullins, Assistant Attorney General for the State of Iowa, hereby certify that on the 10th day of October, 1977, I mailed three (3) copies of the Brief for Respondent in Opposition, correct first class postage prepaid, to:

Martin R. Dunn
2940 Ingersoll Avenue
Des Moines, Iowa 50312

I further certify that all parties required to be served have been served.

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Des Moines, Iowa 50319